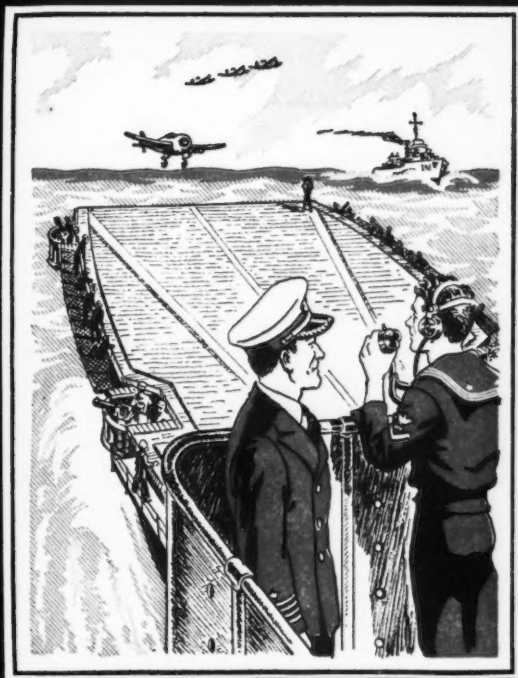
CASE AND COMMENT



Riding the Whirlwinds in a Just Defense

VOL. 47 JANUARY • FEBRUARY NO. 4
1942

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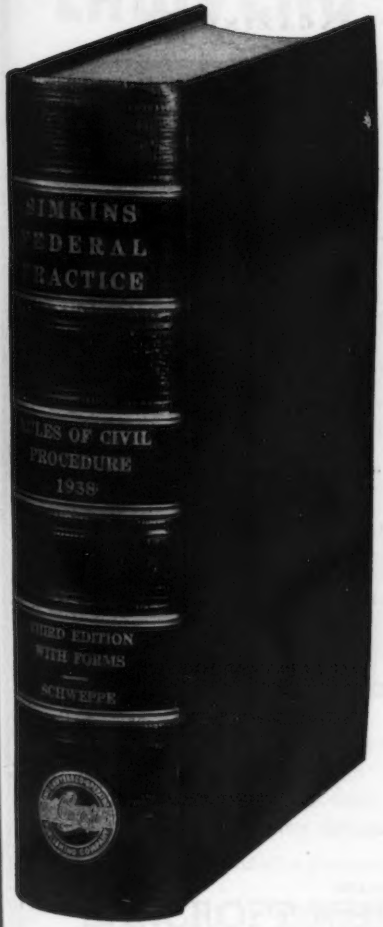
by **ALFRED JOHN SCHWEPPE,**
of the Seattle Bar



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Case and Comment

THE LAWYERS' MAGAZINE

Vol. 47

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No. 4

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Photo by Harris & Ewing

THE UNITED STATES SUPREME COURT AS NOW CONSTITUTED

This is the first group photograph to be made of the United States Supreme Court since the appointment of Harlan Fiske Stone as Chief Justice and the appointments of the new Associate Justices, James F. Byrnes and Robert H. Jackson. *Front row, left to right:* Associate Justices Stanley Forman Reed, Owen J. Roberts, Chief Justice Harlan Fiske Stone, Associate Justices Hugo Lafayette Black, and Felix Frankfurter. *Back row, left to right:* Associate Justices James F. Byrnes, William Orville Douglas, Frank Murphy, and Robert H. Jackson.

LAW LIBRARY ANNIVERSARY[1]

Condensed from Missouri Bar Journal

By JUDGE MERRILL E. OTIS

I DO not know where first was used that phrase, *Super Antiquas Vias* (upon the ancient ways), which is the title of my short address. A little research, I am confident, would disclose the fact that it has been employed again and again by the scholars of our profession in every country and in every age. Before English lawyers began to be, doubtless, the phrase was old. Before English law began to be the phrase was old. Perhaps some day you will be reading the letters of the younger Pliny, that Roman advocate so closely in spirit akin to us today. (Resurrect him, transplant him to this metropolis, and, I guarantee, he will be President of the Bar Association in three years.) Some day you will be reading Pliny's letters and you will see—more than once no doubt—the phrase, *Super Antiquas Vias.*

On my desk in my chambers I have a marble bust of a great lawyer—the greatest advocate, not of a generation only, but of an age. The marble in that bust came from a quarry in the Appenines. The bust itself was made in Italy, hard by the ruins of the tribunals where the voice of Marcus Tullius Cicero—that voice whose eloquence none other save Demosthenes of Greece has ever equaled—hard by the very sites where the voice of Cicero was raised in defense of human rights, hard by the very forum where he championed with consuming zeal the cause of the Republic, until both the Republic and the orator sank down in death. I gaze upon the fine features of the face of Cicero and seem to hear again the daring challenge lashing from his lips—"Quo usque tandem abutere, Catalina, patientia nostra." I gaze again upon his features, so intellectual, so distinguished, upon that countenance majestic, and with the mind's eye see in horror the dissevered head, see the tyrant's daughter drive her bodkin through the lifeless tongue.

Many a time indeed the phrase, *Super Antiquas Vias,* must have been inscribed on his tablets by our ancient brother, must have fallen from his God-like lips.

In Dartmouth College Case

It was not in the works of Cicero nor in those of Pliny that first I read the words of this my title, nor in any of the treatises of the great civilians, nor in any of the commentaries of our Fathers of the Common Law, to whom the language universal was as their native tongue. I first read these words—and not elsewhere have I ever read them—I first read them in the Dartmouth College case, in the concurring opinion of Mr. Justice Joseph Story. I am sure that some of you recall his concluding paragraph—

"I have pondered on the case before us with . . . anxious deliberation. I entertain great respect for the legislature whose acts are in question . . . no less respect for the enlightened tribunal whose decision we are called upon to review . . . I have endeavored to keep my steps *super antiquas vias* of the law, under . . . guidance of authority and principle. It is not for judges to listen to the voice of persuasive eloquence or popular appeal. We have

[1] Extracts from speech delivered on occasion of the One Hundredth Anniversary of the Founding of the St. Louis Law Library.

nothing to do but to pronounce the law as we find it; and . . . having done this, our justification must be left to the impartial judgment of our country."

It is interesting to note in passing that in the principal opinion of the court which, as you know, was written by Chief Justice Marshall, there are only two citations of authority, in each instance, a citation to Blackstone's Commentaries. The concurring opinion of Mr. Justice Story contains 108 citations to cases and writers on the law. Story required a library to do his work: Marshall required only—Story.

One Hundred Years Ago

We celebrate today, my brethren, the founding of a library, the purpose of which has been and is to enable lawyers to discover, and to make it possible for judges to keep their steps, upon the ancient ways of the law.

One hundred years ago this library, with 100 volumes which now have grown to 60,000, had its beginning. Chief Justice Taney lately had succeeded to the place of Marshall. Story was the oldest justice in point of service on the Supreme Court of the United States. Taney and Story! The names of their associates I fear you do not know. 11 Peters (36 U. S.) had been published a few months. I am sure it was among the 100 volumes. The first four volumes of the reports of the Supreme Court of Missouri must also have been among them. Benjamin F. Butler, Esq. (I venture you did not know it), was Attorney General in Washington—but, I hasten to assure you, it was not the Benjamin F. Butler you are thinking of—not the author of "Order No. 28." Robert William Wells was United States District Judge for the District of Missouri. Later he was to be the first judge of the Western District of Missouri, to the custody of whose clerk were committed the records of the old court. Therefore, we may call the Western District, the senior district of Missouri. A junior district, known as the Eastern District of Missouri, an off-shoot or excrescence, as it were, also came into being.

In 1838 Martin Van Buren of New York was President of the United States. (Permit me, sir, to pay a tribute to Van Buren: I consider he was among the best, if not the very best, of the Presidents New York had given to our beloved country.) Thomas Hart Benton was Senator from Missouri in 1838. I saw in a piece of literature which your committee kindly sent me that Benton was present at a banquet of the bar in 1847 at which the story of the founding of this library was interestingly related. I had always revered Benton—until he painted the murals in the capital. Recently I have learned that Benton had a colleague. Bennett Clark has a colleague too—and I want to say that Senator Clark is worthy to be named in the same breath with Senator Benton. That is a real tribute and it is so intended. Clark has a colleague too but—my memory for names is very poor. In 1838, when this library had its birth, a tall, raw-boned young lawyer (all the law books he had read—but he had read them thoroughly—could be carried in the lawyer's green-bag of that day), a tall, raw-boned young lawyer was just preparing to hang out his shingle in a village of fifteen hundred people, a village by the name of Springfield. They called him "Abe," those who knew him best. There was peace in the land, but the seeds of internecine war already had been sown on fertile soil.

The Creators of Libraries and the Destroyers of Books

I shall not attempt to call their names who founded this library. They builded better than they knew. They initiated a great and splendid enterprise. To them we give today our admiration and our thanks.

Our admiration for the man who builds a library is only equaled by our hatred for the man who destroys a library. Who of you has not come near to tears when he has read some such account as that which Prescott gives of the burning in Mexico of the collected books of the Aztec historians and priests—how Don Juan de Zumarraga—"a name," says Prescott, "that should be as immortal as that of Omar," how Don Juan de Zumarraga gathered those rare and priceless volumes from every quarter of Montezuma's empire, piled them in a mountain heap in the market place, "and burned them to ashes," pretending that he did that in the name of The Redeemer, the great lover of all truth.

That Omar of whom Prescott speaks—he was the military founder, you will remember, of Islamic power—saying that all that was worth knowing was on the pages of the Koran, caused to be burned the great Library of Alexandria. What a tragedy that was! To read about it makes us still to bow our heads in grief, after the lapse of 1300 years. For six months, so says the old historian, the books of that great library fed the fires that warmed the waters for the scores of public baths in the metropolis and capital of Egypt. I suppose that even that was not quite so great a tragedy, in one sense at least, as the accidental burning by Caesar's soldiers of the earlier library of Alexandria, which the Macedonian Kings of Egypt had built up—until, by some accounts, it contained 700,000 rolls. Now, thanks to the destroyers, all the extant books out of ancient days are a few hundred volumes.

They are burning books again, I hear,—in Italy and Germany they are burning books again—the successors of Omar and Cortez, of Attila and Ghengiz Kahn, are burning books again. Oh, John Milton, once more thou art needed in the world, men need to hear thy words once more, "as good almost to kill a man as kill a book. Many a man lives a burden to the earth; but a good book is the precious life-blood of a master-spirit, embalmed and treasured up on purpose to a life beyond life. Revolutions of ages do not oft recover the loss of a rejected truth."

One Book

I take down from the shelves of your library one of the latest acquisitions, I suspect it is—perhaps it is the sixty-thousandth volume the library has acquired—and boasts of proudly. Here it is, typical of the mighty host of its companions. Dry as dust, like all the rest, it may seem to be, to the unseeing eye. Volume 302, United States Reports—buckram bound, 813 pages, index and all. To you, I know, it is not dry as dust—for everywhere, upon it and throughout it are sign posts of history and story. Through its black and white, simple and austere, as through an open window, not as through a dark glass dimly, one may see great men at work, perhaps alone at night in their chambers, with thousands of books like this all around them. One may see them in weekly conference with their colleagues. One may hear the arguments of great lawyers. One may see, as it were, unfolding slowly, the processes of social, of economic, of constitutional evolution. There is that on every page to stimulate and stir the fancy.

For example, here on page III, Roman numeral, is printed the list of

the authors of this volume, "Justices of the Supreme Court during the time of these reports." These are not mere names to you. Many of you, I know, have seen these men, every one of them, on the bench of that High Tribunal. (I have not had that privilege; I have not seen the court for nearly 14 years.) As you read these names, "Hughes, McReynolds, Brandeis," and so on through the list of nine names (Thank God, only nine!), I know you must seem to see again, in that great temple which most of you have visited (I have not had that privilege), you must seem to see again the solemn procession of the judges at the hour of noon, you must seem to hear again the crier's words, "The Chief Justice and the Associate Justices of the Supreme Court of the United States." You may have seen that procession a hundred times but I venture to believe you have never seen it, yourselves unstirred.

The procession of these justices it has not been for me to see—but I remember so vividly an earlier court—for six months I saw it almost every day. He who was then Chief Justice came in always with a chuckle audible to all—only he dared to chuckle in that solemn atmosphere. There was always an answering half-smile on the countenance of Mr. Justice Holmes—that man who never could grow old, who was accustomed like a boy to run to fires, who, when he was dying, looked with laughing eyes at his friends around him, twiddled his fingers on his nose at his disciple standing by. And behind Holmes, erect, looking the part of a Roman Emperor, strode McReynolds of Tennessee. Having seen McReynolds, I know exactly how Julius Caesar would have looked in judicial robes. I never saw him entering the court without listening to hear a blast of Roman trumpets, the rumble of Roman chariots.

"Hughes, McReynolds, Brandeis." They always walked away together, when the day was over, Holmes and Brandeis, down the long corridor from the old court room in the capital, arm in arm. It was so I saw them last. I think Holmes is waiting now in the Elysian fields for his colleague. The Great Judge of the Universe will be glad to see them both, but if He does not agree with them they are certain to dissent from His decrees.

"Sutherland, Butler, Stone, Roberts, Cardozo." . . . "Cardozo." Ah, my brethren, I wish I might have seen Cardozo—if only once. All I have is a photograph that I bought, and two letters, written out in long hand. . . . As I turn the pages of the first part of this book I see again and again: "Mr. Justice Cardozo delivered the opinion of the court." And then, at page 348, I come to this (it is the case of Smyth vs. United States): "Opinion of the Court by Mr. Justice Cardozo, announced by the Chief Justice." After that, following almost every opinion, is this line: "Mr. Justice Cardozo took no part in the consideration or decision of the case." This volume, 302 U. S., contains then the last contributions to the judicial literature of mankind—I do not say to the judicial literature of this generation only—the last contributions of that great American jurist, philosopher and saint.

He has been gathered to his fathers. Gathered to *his* Fathers, who first began to move across the pages of human history, when "The Lord . . . said unto Abram, get thee out . . . from thy Father's house, unto a land that I will shew thee: . . . in thee shall all the families of the earth be blessed." Mankind was blessed by Jehovah's gift of Cardozo. The President who appointed him, they say, was a conservative. He knew Cardozo was a liberal, on that day when

by long distance telephone he called him at Albany and said: "Judge Cardozo, I would like to appoint you to the Supreme Court of the United States." He knew he was a liberal and a member of a political party different from his own. Those things did not concern him. For he knew also that Cardozo's was the kind of intellect and learning, the kind of sympathy and soul, that every justice of our highest court ought to have. Yes, he was a "liberal," but a liberal who, to the best of his great ability, always kept his steps *super antiquas vias* of the law. He was the Good Samaritan type of liberal, not the Jesse James type of liberal.

"Roberts, Cardozo, Black," so ends the list. "Benjamin N. Cardozo, Hugo Black." . . . I have a friend who warned me that, as a judge, I should never speak of certain matters. I have given heed to that solemn warning.

So this one volume, this single book out of the 60,000 that you possess, suggests so much (and so does every law book to the clearly seeing eye), that one hesitates to put it by. All these judges, the authors of this book, almost every one, had made themselves acquainted with the ancient ways. On every page they have inscribed, *"ita scripta est."* Here, in one volume, are deep wisdom and great learning, moving eloquence and convincing logic, science and philosophy, history and prophecy.

. . . . . .

Another hundred years will pass. Many things that we see around us will crumble and disintegrate and be absorbed again in the earth. Another hundred years will pass. The youngest of us here, old and full of honors let us hope, long since will have laid down his pen; the dust will have gathered on his unused desk. . . . The Law Library will be here still. . . . Among its books our brothers yet to be, over the ancient ways will seek to find the law—to find the law, that, like him who found it on Sinai's rugged heights at History's dawn, they too may reveal it to mankind. So it will be a hundred years from now. So it will be, we pray, so long as yonder Mississippi rolls its mighty flood toward the eternal sea.

HER DAILY BREAD

MR. BECK, *being a distinguished Shakespearian scholar, was very fond of quoting The Bard of Avon, and once as Solicitor-General, having finished his argument with what he considered a pertinent and apt quotation from Hamlet, as he sat down, he heard Mr. Justice Holmes, turning to the Chief Justice, who was Taft, on his other side, and saying not altogether in a whisper, "I hope to God Mrs. Beck likes Shakespeare."*

JOURNAL OF THE
GEORGIA BAR ASSOCIATION

LENA'S FADED ART TREASURE

By GERALD H. KOPS
Member of the Milwaukee, Wisconsin Bar

LENA LESHIN, a widow, was the proud owner of a painted tapestry, presented to her by her late husband. The tapestry was adorned with the likeness of a beautiful lady, mostly nude, and partially attired in gauze, flying through the air with the greatest of flair. Flowers in multiple colors, the azure of space lent allurement to its observer. It graced the most favorite niche in her home and was a source of constant pleasure and a reminder of her late husband's many acts of kindness.

In the summer of 1939, Mrs. Leshin concluded that the lady needed a hand bath, and so she engaged the Intra State Spic and Span Dry Cleaners to clean and press the tapestry by hand. The cold corporation gave its solemn assurance that none of the figures, particularly the lady thereon, would be faded or destroyed by its guaranteed cleaning process. However, the tapestry came back from the cleaners, so Mrs. Leshin claimed, minus many of the colors, and what is more shocking, minus much of the gauze. Instead of the erstwhile blushing flying young virgin, she appeared to her like a faded jane. It seemed to her that the tapestry had gone through a blackout.

She brought action for damages in our Civil Court and the court awarded her $400.00–$200.00 for actual damages and $150.00 sentimental damages. The defendant appealed to the Circuit Court, and upon appeal briefs were filed by each side.

Wm. B. Rubin, attorney for Mrs. Leshin, a distinguished gentleman of the bar who is given to much erudition and eloquence, presented a lengthy brief to the court, and after disposing of the legal questions involved, made the following comment, which I believe is of interest, as well as amusement to the profession. May we take the time of this Court to make the following further observations:

This is a rare yet interesting question for judicial consideration. The plaintiff maintains that the painted hanging was a work of art. The defendant in a measure takes issue with that claim.

What is art? Who is an artist? Who is the best judge of art? Are experts to determine the legal value of art? Is there a judicial measure of art?

Ever since man entered upon this mundane sphere enating from savagery to the time of the renaissance,—from the hut of the primitive to the salon of the sophisticated, or the Bohemia of the dilettante, by pen, brush and chisel he immortally recorded on paper, canvas and stone his emotions. The gamut of his emotions is wide and variant. His works transcend the imagination of eons of dreams. From the laic to the sacred, from the ridiculous to the sublime, from the comic to the serious, from caricature to character, from the base to the celestial, man's work of art fills the archives of the ages. Each such effort is scarred with the hunger, neglect, and sufferings of those whose names have been made immortal.

Very few of the now proclaimed immortals enjoyed during their lifetime the acclaim of their work. Most of them lived in poverty and hunger; some driven by disappointment found refuge from an unappreciative world in excesses. Strange as it may seem, art to the uninitiated as expressed on canvas like everything else had its

vogue, its dissenters, its traducers, as well as its patrons. Even after death the immortals have found their critics, mild and severe, their disciples, strong and faithful. Many of the great works that are now safeguarded as museum treasures and find collectors ready to pay for a bit of canvas daubed with paint as high as a quarter of a million dollars and more, went begging for the price of a meal or a bed in the lifetime of its genius.

We dare venture from a limited observation that many of the classics for which "connoisseurs" stand ready to pay figures beyond the average person's appreciation, find little or no appeal to the average normal human eye. That is why all art, particularly the art transposed on canvas has its many divided schools of thought and appraisals.

The Court saw the painted hanging. Whether it be accepted or not as a work of art, the fact remains it must have taken years of study, an innate talent and days of labor before its creator was capable of transposing on cloth a figure alluring to the eye, deftly veiled in mythological etherialism, backgrounded in colors and shades, inviting observation and inspection, and divergent opinions expressed either in ecstasy or disapproval.

What is that painted cloth worth? There is no market for it. It has no market value. The court must find a value. The law provides a yardstick for its evaluation. It is worth what its possessor values it at, provided the court is of the opinion that the value placed upon it by the possessor is reasonable and fair, under all the circumstances and facts.

The testimony is that the deceased husband of the plaintiff paid for it $400.00. He gave it to his wife. It evidences not only appreciation of the nicer things in life, but a generous disposition towards home and its embellishments. He gave it to his wife as a treasure to be kept, an heirloom to be prized, and thus it remained hanging upon one of the walls of her home even after the husband had passed beyond. No doubt, every time she looked at it she not only appreciated its beauty, but also a recurrent thought of her husband's love and generosity came to the fore.

The plaintiff's expert testified that to reproduce, to retouch it to its original state, to revitalize all its variant colors so that it would be as inspiring, as alluring to the eye, as satisfying to the taste of those who lived with it as before the defendant undertook to clean it, it would cost approximately $500.00.

The expert for the defense testified that he did not deem it a work of art. That it was a work now passe, and that possibly its creator received for it no more than $50.00 or $75.00. The defendant's expert does not take issue with the cost to restore it to its original state. He ventures no opinion on that.

Both experts may be right. It may be true that he who created this tapestry may have received for it but $50.00 or $75.00, and who knows, maybe less. That is the sad fate of the talented, the masters. That is why thousands lived and live in garrets and in want; that is why Puccini portrayed in his operatic tragedy La Boheme the plight of the artist and the poet, living and dying in hunger and cold. Enrico Caruso sang the part of Rudolpho, with his inimitable melodic lyricism that melted his listeners to tears and for it it is said he received as high as $5000.00 a performance. Yet there are those partisans to the majestic positiveness of Wagner's music who did not consider Caruso an artist. Artists of lesser fame have sung that and other roles. That they have passed on unknown or received but little for their efforts

did not take them out of the category of an artist, or their effort that of art. Such is the field of art. Such is the fate of artists. Nor are we to be influenced by the fact that the said painting had its limited vogue, according to the defendant's expert, between the night of the last and the early dawn of the present century. Being less than a hundred years old it is not an antique. Therefore, its artist was neither a Titian nor a Raphael. Its maker may have borrowed the theme from some old master, or he may have copied all or most of it from another painting. The artist's name is not found on the opus. Whether the omission is due to the fact that he was a member of a school which made it a practice of leaving it to the travail of others to discover its creator, or whether his imperator or procurator directed its omission, because most people are guided in their judgment of art by names rather than by merit, is of little moment. The fact remains that whoever painted that tapestry, whether it be an original or a copy, produced upon cloth a very aesthetic piece of art. Its maker had a true architectural understanding of women's beauty and graces; a bent for the mystic, and a ken of mythology, besides being an excellent painter of objects and colors. It is fancifully conceived and beautifully done without a modernistic syncopation or distortion. It was conceived and done within the accepted classic regime of art.

And thus, whether experts say it is or is not a work of art, it nevertheless has value. And what is it worth? It was acquired by the party who sold it to plaintiff's husband from Marshall-Field & Co., at a cost of $1000.00, and in turn sold to plaintiff's husband for $400.00. Treasures that embellish homes as a rule have no market value, and the court must determine from the evidence in this case whether $400.00 is a reasonable value. The plaintiff is entitled to her tapestry as she acquired it. He who damaged it must restore it to its original state, or answer in its money equivalent. That is the judicial guide. Otherwise, justice would fail.

Therefore, the price of $400.00, which the plaintiff paid for this painted hanging is reasonable. Defendant breached the agreement; its negligence, its return of the tapestry in the ruined state is a substantial loss to the plaintiff. True, the court is not to be concerned with the sentiment held for it by its owner, nevertheless, where there is no market value by which the court might otherwise be guided, sentiment for such objects do receive judicial consideration.

We live in a utilitarian world. It were better if we do not forget art and artists. Art is the dessert of civilization. It may be the luxury of the rich, but it is the soul of the genius and the milestone of progress. The artist too has his legal rights and art its judicial protection.

LAWYERS

"Some people think that a lawyer's business is to make white black; but his real business is to make white white in spite of the stained and soiled condition which renders its true color questionable. He is simply an intellectual washing machine."

—J. Bleckley.

THE UNITED STATES COMMISSIONER

By W. F. CAROTHERS, Houston, Texas

Having been United States Commissioner for the Houston Division of our Federal District Court for nine years and being now in my seventieth year of age, it would seem to be an opportune time to make some observations to the bar about the office. The prospect of an early retirement removes the idea of any "axe to grind" in the matter.

The Commissioner's duties are, like those of all magistrates I suppose, two-fold: to safeguard the administration of justice by securely holding officially accused persons to answer the complaints against them and to protect the accused citizen from possible mistakes and even vindictiveness, if necessary, on the part of law enforcement officers.

I am more and more convinced that it would never do to leave the holding for trial of accused persons in the hands of the enforcement officers themselves. In the very nature of the case, such officers are not to be expected to exercise calm judicial judgment in such matters and the wisdom of separating the judicial from the executive functions is here brought out with great clearness. Hence it is that the arresting and complaining officer must take his prisoner forthwith before the nearest Commissioner, who has been appointed by and represents the Judge of the District, where the wisdom of holding or releasing the accused may be judicially ascertained.

Personally, I have always kept in view the thought that in many cases my official conduct makes the first impression of Federal justice which accused persons receive. I have endeavored to make that first impression one of utter fairness, with plenty of firmness in reserve. That is my idea of Uncle Sam.

The Commissioner can settle many questions, of law as well as of fact, by patient hearings, thus saving work for the Judge and money for the taxpayer. I have never felt it right to send a case up for trial when I knew it would not stand upon the law or the facts. That is about my conception of the much defined "probable cause." The better lawyer one is, therefore, the better Commissioner he can make, other things being equal.

The idea is prevalent among enforcement officers that the Commissioner is their ally in making cases and my firmness in maintaining a judicial attitude has surprised many of them and offended not a few. In fact, this has been so general that I suspect I am regarded by them as biased in favor of the defense, but the record does not bear this out. Out of discharges on 53 hearings during my first five years as Commissioner, only six persons were indicted following their discharge, and of these six indictments, five were dismissed by the United States Attorney without bringing them to trial and the lone survivor got a six months sentence suspended.

A Commissioner has equally to guard against flattery (as such) on the part of defense counsel. For instance, I found that some of them were asking for hearings for no other purpose than to make more fees for the Commissioner. I headed this off by quietly making it known that I did not charge up the fees due to delays from such requests.

There has been much discussion of putting Commissioners on a salary basis instead of paying them in fees. I have opposed this change because it

would prove more confining on Commissioners. In nearly all cases the job fits in admirably with a small law practice and the fee system goes along better with that than would a salaried job and its attendant obligations. But I have all along advocated, with our Representatives in Congress, a change from the present system of a fee for each item of service, entailing as it does, long detailed accounts and expensive examination of accounts at Washington, to a system by which we would be paid simply an average fee for each of the cases filed. The total fees paid and received would naturally be the same, but there would be a great saving at each end of the line in preparing and checking the accounts.

The freedom of the Federal judiciary from immediate political pressure was emphasized to me in a case I once had where an influential ranchman from another county in the Division was charged jointly with a striking looking mulatto woman on a liquor law violation. I will not mention the circumstances which linked the two together in the minds of the enforcement officers. But on the hearing, my little court room was packed with officials, big ranchmen and influential citizens generally from the county of the accused ranchman and they gazed impressively upon me while defense counsel pointed out the seriousness of my linking this ranchman with this woman by making a joint commitment, etc. I could but wonder what I could do under the circumstances, were I a State magistrate of that county and believed there was "probable cause" for holding him!

Relatively speaking the Commissioner's office is a minor one, but in the eyes of the unsophisticated, at least, it is often regarded very highly. While waiting with the public for a bus one day, I heard an old negro say to two small picaninnies: "Now you boys take a good look at dat man. He is a Federal Judge. Ef'n you do right, he will treat you right, but ef'n you do wrong, he will send you so far away dat you never kin git back." (This by way of contrast with a mere State Judge, who can only send convicts to Huntsville, a well known and near-by town where the state penitentiary is located.)

On another occasion, while sitting in a missionary Baptist church and during the preliminaries, I noticed a small boy facing me on the next pew in front. His big brown eyes were studying my every feature. By an inviting smile, I induced him to speak and he asked "Are you the United States Commissionary?"

UPON ENTERING THE STUDY OF LAW

. . . *To a rich friend, whose son was about to study law: "Sir, let your son forthwith spend his fortune, marry and spend his wife's and then he may be expected to apply with energy to his profession."*

—LORD KENYON.

PUBLIC SPEECH AND THE LAWYER

By Dr. JOSEPH G. BRIN

Of the Massachusetts Bar. Author of "Personal Power Through Public Speech" (Harper's), and "Fundamentals of Public Discourse."

In and out of the court room, much is expected of the lawyer in the way of effective and persuasive public speech. For is not the profession of law associated with pleading, argumentation, with leadership? And can there be true leadership without that personal power and ease that come from a command of language, ringing authority (vocal) and the many other qualities that make one a force in society?

I

It has been within my province to instruct members of the Bar in the art of persuasion. As a class, I find them superior. It has been part of their training to reason from cause to effect. Yet many evince no (or hardly any) knowledge of the art of platform speech as such. They are part of "that host of inarticulate idea-people" who are often confused or lost outside of their accustomed circle.

Obviously this is not the place—nor is there the space—for a treatise on public discourse. Suffice, then, a few pointers, with the implication that every law student should be required to complete a course in public speaking before receiving his degree.

Lawyers and other professionals have mastered techniques and ideas more difficult to attain than the art of public speech, yet these men and women are hindered in transmitting their knowledge orally. Insufficient and incorrect speech training is the cause of this incapacity.

Quite simply, enlightened training is the remedy.

Such practical instruction in self-expression through the spoken word should begin in grammar school and continue through the high school, college and professional curricula.

This type of learning material is ideally suited to the newer and more realistic trends in education. If, indeed, school work is now considered a preparation for living, and if the classroom should simulate the activities of actual life, how can there be a subject more teachable, adaptable, and rewarding than public speech!

Needless to labor the point that the foregoing has particular appreciation to the student of law, the speaker and pleader of tomorrow!

II

Gestures: Scope and Limitations

As with all speech tools—enunciation, pronunciation, word-choice, etc., —so with gesture: it is necessary to present to the audience a finished product. One does not depend upon the inspiration of the moment for a correct pronunciation,—of "desultory," for example. It is wise to learn and practice the proper utterance. In other words, one must have preparation, though the finished product need not show it.

Likewise, gestures may be practiced and perfected. The performance, however, should and must be spontaneous and natural. There should be a little of the "glory of the imperfect" in the presentation to the real audience. Mechanical perfection in gesticulation is undesirable and injurious to the total effect.

Gestures must harmonize with the speaker's personality; with the character and weight of what he has to say. Indeed, they will be as variable

as the New England weather—depending on the nature or composition of the audience. Could you imagine, for instance, a scientific lecturer—speaking perhaps on relativity or the composition of bone structure—throwing his body and arms wildly about?

What has been said does not, however, preclude suitable gesticulation on the part of a scientist or scholar in order to punctuate his text with enthusiasm.

The speech, then, is the thing! The gesture is but an aid to forceful speaking. Proper subordination (relation) is necessary. Though the Frenchman may stare blankly at the German's "Wie Geht's," and the Spaniard shrug with mild bewilderment at the American girl's "Hi 'ya toots," they would no doubt understand the significance of the extended hand or the friendly smile. Physical expression has no case endings in German and no irregular conjugations in French. Pantomime, gesticulation, is universal language. Everyone knows what a sweet smile or a sour scowl conveys. In our every-day relations with people, we smile or scowl as the occasion demands. To learn to apply this natural expressiveness to a public speech is a worthwhile effort, for here is a language that is universally understood and appreciated.

To indicate some visible sign of wrath when the idea spews hot with rage lends force to the utterance. It converts speech into eloquent expression.

Words are a product of man's ingenuity: they were invented and are intended as vehicles for the transmission of ideas. They are but a means to an end.

The urge to exchange, share and pass along ideas effectively gave birth to words.

Men have always scolded their children, voiced their plans, commended their subordinates—through the medium of speech.

Fundamentally, speech—articulate speech—is a basic tool of man. A hermit alone in a cave, a recluse alone on an island, has no need of this "basic" medium of communication. In his contact with other men comes the need for self-expression. It is necessary to persuade, to dissuade, to exhort, to encourage, to blame, to inspire.

As soon as one person addresses another, a contact is made—"a meeting of minds." Immediately there is set up a critical apparatus in the listener. The talker must always be ready to meet the demands of this critique. Because groups differ as do individuals, this requirement is made of the man who speaks before a group. Thus, without complicated stimuli, the simple act of addressing fellow-man or fellow-men calls into being a categorical set-up: the speaker and his varying, discerning audience.

Men who speak are presumed to do so for a purpose: that is, because they have something to say. Having something to say is basic to all speech-making. How to say that something is the circumscribed province of the art of public speech. The need for such an art is dictated by the very nature of man: the critical instinct, the need "to be shown," the capacity for amenability—but, most of all, the desire on the part of the speaker to share some conviction. Putting this in another form: the art of public speech is a reality predicated upon the desire in man to sell—on the one hand—and the capacity to be sold—on the other. Thus, speech which is abstract or symbolic can sell only abstract ideas. The response in the listener gives rise to the denial or acceptance of the ideas advanced. The acceptance of the idea usually will result in or will be followed by some concrete action.

The art of speech seeks to meet the demands of man as he is. It does not blink at the truth of human response: for it is perhaps the most utilitarian of the arts. The principles which it embodies are those best designed to make the communication of ideas the most effective, most direct, most appealing. As our knowledge of human nature has advanced with the progress of psychological investigation, the speech-art has humbly drawn from this faculty the information that is pertinent to it. As with other arts in a state of progress, development and clarification, our subject meets with the usual flux and change—a change predicated upon changing concepts of human nature and of social groups. To refuse to adapt the practical study of speech to a changing world is no less than to emasculate that art. For does not a failure of the recognition of the realities of change lead to apathy?

But speech as an art has been atrophied in those lands where human response has been disregarded and where force has been substituted for persuasion. In such unfortunate localities speech is not necessary because the basic aim of speech, that is, communication of ideas, has been outlawed. There is no exchange of thought, no weighing in the balance. no testing of thought on the litmus paper of discussion. Totalitarian harangues and demagogic blasts are to a free people the dirge of death of intellectual free-exchange.

In democratic countries, this concept of free exchange is the essence of human relations. A fierce hatred of the antithetical, enslaved opinion is the natural instinct of a free nation. For we here prize mental freedom above physical liberty. The possession of this abstract license, most of us agree, is worth defending even unto death. It is acknowledged in a free-thinking country that each man has an opinion that should be respected, that there exists in every listener an intelligent and qualitating mind.

To an audience made up of such individuals, psuedo ideas—presented as inexorable absolutes or finalities—are immediately invalidated by their own very nature. Orations containing command—inanities issued from a demagogic source—are sometimes mind-forming, but are never mind-developing. Propagandistic pounding sometimes succeeds through the sheer force of repetition, and perhaps through sheer force itself (that is, involuntary attention or attention foisted upon the listener by legal command). Is it not clear that proper persuasion (persuasion to which one yields voluntarily) commands through ideas that appeal to the mind, presented by a sincere individual who respects at least in some measure the basic dignity of the individual and the fundamental judgment of his listener? It is such a speaker who adds to an honestly conceived message the effectiveness of select language, charming voice, manner, etc.

Many changes have been wrought in public speech as a result of improved knowledge. A significant tribute to the increased intelligence of the audience—as a unit—is the evolution and development of the question period now common at the end of speeches. This device assumes ipso facto that the audience has absorbed the essentials of the speech and that many exercise the prerogative of intelligent questioning and the normal desire to add to one's information. Audience participation has thus been given its great chance. Examples of this activity are amply observed in the modern forum, round table discussion and in the now highly developed town hall idea.

Motivation: A New Adjunct

The institution of this adjunct to the formal speech is not just another "bright idea." It is a natural outgrowth of the intelligent application of psychological knowledge to the art of speech. The "talking to" or "talking at" lecture is as outmoded as the horse and buggy. It is synonymous with decadent scholasticism. It resembles in monotony and in droll discipline the schoolroom of a past century. We now generally try to talk with our audience. To do so necessitates a new awareness on the part of the speaker—the presence of dynamic listeners who respond when their minds, their sympathies, their emotions, are properly touched upon. This rugged audience individualism, characteristic of varying social groups, demands appreciation and respect by the speaker.

"Know your listeners' (audience) is now a paramount dictate for speechmakers. Speakers are presumed to know their subject, but they must make their listeners understand and feel with them. Modern education lays great stress upon motivation as the inciting force to learning. It is the aim of the good teacher to make the student desire to know. Equally true should this be the aim of speaking. The audience must be motivated. How to inspire listeners is a matter which involves careful planning. It must be considered equal in importance with the very important matter of what the speaker wants them to learn from his message.

This motivation method serves the speaker admirably. To use it properly, he has to learn something about the listeners in advance of his speaking engagement. An effective speaker will always find out all he can about the audience he is to address. If he is to speak before an organized group, he will inquire of its aims and activities. In a word, he will familiarize himself with the unifying forces which keep this group together. Suppose he is to speak before a league of women voters—the name of the organization itself indicates that the group consists of public-spirited women interested in the problems of their community and nation. If he is to address the "Shakespeare Club," he understands that whatever difference there may be among the members, that they are presumably as one in their love of English literature. The same principles must guide in the case of a merchants' association, a trade union, or scientific body.

There are few things more flattering to an audience than to feel that the speaker has personalized his speech expressly for it. This immediately softens critical instincts and puts the group into a receptive mood. Such a device becomes one of the greatest tools of the speaker in his efforts to influence his listeners.

He must present the material of his discourse in a way so as to attain his goal pleasantly and forcefully. In striving for such ends, the speaker must be cognizant of the inspirational value of charts, lantern slides, drawings, gestures, emotion: in short, of the various auxiliary media for the presentation of an idea.

Where law ends, tyranny begins.

—William Pitt.

THE DIRT-ROAD LAWYER

(An observation)

Contributed by Milton J. Whedon, Medina, N. Y.

A LAWYER to be successful must be courteous, diplomatic, shrewd, an expert jollier, of equable temper, slow to anger, and favored with a retentive memory, good cigars, excellent business judgment, the embodiment of virtue but with a good working knowledge of evil. He must understand bookkeeping, banking, medicine, human nature and some law. To these qualifications he must add that of a mind reader, a hypnotist and a good story-teller. Then, too, he must be familiar with machinery of all kinds and know the price of everything from a second-hand jew's-harp to the salvage value of a skyscraper and the union rates for wiping a joint or performing an autopsy. He should be a good horse trader, understand railroad timetables and be able to reason with a woman.

His proficiency and accomplishments must be varied and complete. He must be able to extricate a lima bean from a boy's nose with a buttonhook and at the same time comprehend the reading of a plethoric opinion differentiating between distress and distrain written by a judge who was at one time a college professor of Greek.

He must work for little remuneration, be willing to serve on all civic and welfare committees, sing a little bass, and know when to jolly the jury and when to fawn upon the Court without exciting suspicion. His erudition must encompass all matters from pear psylla to bond limitations and the voting pluralities in the rural districts.

Withal, his desire for pelf must defer to the code of legal ethics.

If he meets these specifications, he will leave a legacy of probity, sterling achievements and a reputation soon forgotten—but no estate.

L'ENVOI: *Non commatus in-swampo.*

AB INITIO

Contributed by Frank L. Lynch, Winchester, Tenn.

A NUMBER of years ago I happened into a courtroom where a magistrate trial was in progress. A load of corn was stakes and interest was running high among litigants, witnesses and bystanders. The attorney for the plaintiff (long since gone to his reward) was verbose and used all the Latin phrases at his command, especially before a Justice of the Peace.

He was making his closing argument and in his flight of eloquence stated that, "Old man ——— (the defendant) was guilty ab initio." Attending the trial were a number of the defendant's grown sons, none of whom were Latin students. When

the lawyer used this expression one of the sons turned to a wag attending the trial and inquired, "What was that he called the Old Man?", whereupon this party, assuming familiarity with Latin, informed the son, "That is a Latin term meaning that he is kin to a nigger."

This brought about an immediate and abrupt termination of the proceedings and it required all the physical efforts of most of the attendants at the trial to prevent the defendant's family from making shoestrings out of the plaintiff's attorney.

MOODY MULE

Contributed by Wm. B. Guthrie, Durham, N. C.

THE late Justice Brogden of the Supreme Court of North Carolina, was noted for his common sense which he always so aptly expressed in his opinions. He wrote an opinion in Rector vs. Coal Company, 192 N.C. 804, 136 S.E. 113, on the habits of a mule which is a classic.

The plaintiff, an employee of the defendant, went into the stall of a mule, and the mule whirled around catching plaintiff and mashing him between its rump and the side of the stall. . . . There was a verdict for the plaintiff for $600.00 and defendant appealed. The judgment below was reversed, and we quote from Judge Brogden's opinion:

> "A mule is a melancholy creature. It is *nullius filius* in the animal kingdom. It has been said that a mule has neither 'pride of ancestry nor hope of posterity.' Josh Billings remarked that if he had to preach the funeral of a mule he would stand at its head. Men love and pet horses, dogs, cats and lambs. These domestic animals have found their way in literature. Shakespeare said of a horse: 'I will not change my horse with any that treads but on four pasterns, when I bestride him, I soar, I am a hawk; he trots the air; the earth sings when he touches it.' But nobody loves or pets a mule. No poet has ever penned a sonnet or an ode to him, and no prose writer has ever paid tribute to his good qualities. He is kicked and cuffed, and beaten and sworn at, and frequently underfed and forced to work under extremely adverse conditions; yet, withal, he has a grim endurance and a stubborn courage which survives his misfortunes and enables him to do a large portion of the world's rough work.
>
> "It is a matter of common knowledge among men who know mules and deal with them, that they are uncertain, moody and morose.
>
> "This particular mule, charged with injuring the plaintiff, was referred to in the oral argument as an 'unsafe mule' and as an 'unsafe tool and appliance.' The idealist may dream of the day when the 'world is safe for democracy,' but this event will perhaps arrive long before the world will be safe from the heels of a mule.
>
> "The evidence in this case discloses that the mule of the defendant did not kick or bite or attack the plaintiff, but that as plaintiff went behind the mule in the stall, he whirled around and his rump pressed the plaintiff against a part or partition of the stall and mashed him. . . . If recovery could be permitted under the facts in this case, then every farmer or contractor in the State could ill-afford to keep a mule. Reversed."

APT REPLY

Contributed by Charles F. Harrison, Commonwealth Attorney, Leesburg, Va.

A COMMONWEALTH attorney in this county finds that he must be very versatile in order to care for his correspondence properly. As an illustration, the following letter was received by me this morning, viz:

> "Charlie Harrson
> Dear Sir:
>
> Just a few lime to ask you what can a girl father do with her if she go with a married man he is not live with his wief. Well I an the girl. I will be 18 in Aprit I an word in apples. I come home ever nigh but then talk about this man. You know as well I do this nade anybody nad talk about the man you go with.

So I though I will writer to you about it writer to me what you got to say about it.

Yours truly,"

————————.

To which I sent in language I thought she might understand, the following reply, viz:

"Dear Miss ————,

I take up my pen to writer a letter in ans of yours. I thankee you for same. I xpert in such affares and my advice is as follows:

List to yr Dad
List to yr Ma.
Bfore yr courting
Goes too far
This is reason and
This is the law.

Very truly yours,

—CHARLIE HARRSON.

A LETTER TO A J. P.

Contributed by Justice O. B. Sutton, Coral Gables, Fla.

The following letter was sent to a Coral Gables, Florida, Justice of the Peace in a Bastardy Proceeding. It is unique and although the subject is unpleasant deserves a place in the "Scrap Book" along with other Americana of The Law.

Dear Judge:

In High Respect To Your Honor. Iam. Just Writting. This Letter As To The Case Of ——— and ———. I do Not As A Minester Of The Gospol. Be Involve In Such Matters

But As A Leader. I Do Want To Say. That This Girl. Is Not Of A Good Character. . . And Do Not Lead A very Moral. Life. Yet If The Boy Is Gilty He should Be Made Do Something For Her. But On The Other Hand In My Mind. And I. Have A Good Reason. To Make Such Statement. That The Girl Do Not Know Who is Responsible For Her Condition. . I. Do Believe. Many Girls Bring These Things Upon Them Selves. Not Trying To Defend The Boy (____) At All. Yet I Do Not Believe He should Be Compel. To Take The Burden. Of Carring The Load Of A Life Time. That Is Force On. Him Or Any Man. . The Girl Is Not Of The Type That Is Responsible . Because I Believe If She Was . Just Like They Made The Arrangement. To Commit The Act In. Friena Ship And Kindness If She Was A Respectable Girl., They Could Make Arrangements. To Remendy The Condition. Without Court Decision . . . The Girl Has Been Warn. Several Times Why Shouldnnt. She Give Up Her Ways, and Live A Clean. Moral. Life. And Be Of A Christian. Character . . I Hope This Will Not Change Your Mind in Rendering. A Fair And Imparcial Decision. Thanks.

From. A Man.

Of GOD. Wich Have Both Parties At Heart. That They May Learn. A Lesson. And Come To Christ And Live In . Peace.

HEAVY RECORD

Contributed by Samuel G. Harrod, Jr., Eureka, Ill.

Fry v. Lebold, 31 N.E. (2) 257.

Court of Appeals of Ohio; Montgomery, Judge.

"WITH painstaking care we have read the scena presented, consisting of nine hundred and thirty-four pages. We use this term in view of the definition given by Webster as an 'accompanied dramatic recitative interspersed with passages of melody.' And we use it advisedly, since the authors of the production submitted for our consideration seem to have acted on the theory that,

"All the world's a stage, and all the men and women merely players;

They have their exits and their entrances;

And one man in his time plays many parts."

This was a case of alienation of affections, and the court in rendering

judgment, affirming the lower court in a verdict of one dollar, continues.

"All the other assignments of error go to alleged misconduct of counsel. There are but few pages in this record free from reports of altercation. It would appear that two, three and four lawyers were talking more or less continually, injecting comments, making facetious remarks, paying but little attention to the rulings of the trial judge.

"Certainly this turning of a lawsuit into an opera bouffe is to be criticized severely, but, in the absence of a showing that the rights of a litigant were affected adversely, we are not disposed to disturb the judgment.

"In view of our characterization of this record, this conduct of counsel deserves some further comment.

"Mr. Walter Ruff played many parts. He bewailed his fate in tragic manner not unworthy of a King Lear. Imitating Mazeppa, he lashed his soul naked to the wild horse of his fervid imagination. In the final act, he interspersed the melody, and assumed the role of leading tenor in light opera, singing to the jury and to the spectators.

"Mr. Arthur Limbach, laying aside for the nonce the duties imposed upon a statesman, exhibited histrionic ability of no mean order.

"Counsel for appellant, presented facetiously as the Mills brothers, took the part of the chorus in the Greek drama, and, beholding what passed in the acts of the tragedy, expressed vociferously the sentiments evoked by the passing events.

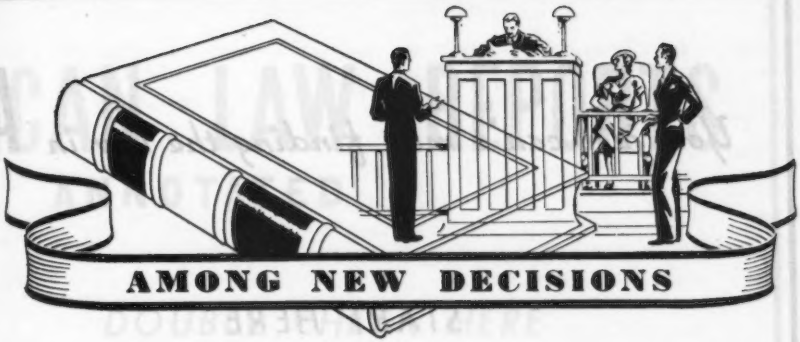
"It is true that tragedy and comedy were somewhat confused and at times all the leading actors sought a hearing simultaneously.

"The whole performance might well rival Mr. Eugene O'Neill's 'Strange Interlude,' which for weirdness in conception and duration of execution amazed all who saw and heard it.

"The play is ended. The actors who failed to receive the curtain calls seek a return engagement. We are not disposed to book it. The judgment may be affirmed."

LAMENT

I'm supposed to be a Secretary, but
I get a Steno's pay
I answer the mail, I keep the books,
and shoo the flies away.
I tell all the pests that the boss is
"out"
I interpose "Sir" when he dictates
"you lout."
I smooth the feathers of a client irate
And get them to promise they won't
give us the gate
If he forgets an appointment (which
he so often will)
While talking or golfing with Tom,
Dick, or Bill.
I have to be pleasant to sourpuss and
goon,
Someday, I'm going to be crazy as a
loon.
I have to be careful and watch his
each mood
For, if he's been up late, minding
baby—or stewed
I must tiptoe around, press the buzzer with ease
Speak ever so softly—be careful, don't
sneeze.
Read his mind when he leaves and
not ask, "When
Do you think that you'll be back
again?"
But, if he condescends to tell on his
own
Allow an hour more for people who
phone.
Is this enough, or shall I tell more
Why my spirit is broken? Why my
purse stays so poor?
Why I look so brow-beaten when I
head home each day?
The answer is, I'm a Secretary with a
Stenographer's pay.



AMONG NEW DECISIONS

Army and Navy — *civil liability of officers.* In Wright v. White, — Or —, 110 P (2d) 948, 135 ALR 1, it was held that the principle of immunity for acts done in a judicial capacity extends to military and naval officers in exercising their authority to order courts-martial, or in putting their inferiors under arrest preliminary to trial by courts-martial.

Annotation: Civil and criminal liability of soldiers, sailors, and militiamen. 135 ALR 10.

Assignment — *union dues.* In Pacific Mills v. Textile Workers' Union, — SC —, 15 SE (2d) 134, 135 ALR 497, it was held that the enforcement against an employer who has not consented thereto, of assignments by a large number of employees to a labor union of stated amounts of money out of future wages, in payment of their union dues, will be enjoined where the additional clerical work occasioned by honoring the assignments and the risk of double liability in case of error and the possibility of having to defend actions for wrongfully deducting dues where the assignment is disputed would impose substantial hardships upon the employer.

Annotation: Deduction or collection of labor union dues from wages of employees. 135 ALR 507.

Assumpsit — *Commissions paid unfaithful broker.* In Wechsler v. Bowman, 285 NY 284, 34 NE (2d) 322, 134 ALR 1337, it was held that one employing a broker to sell property is, where the broker has taken a commission from the buyer, entitled to recover from the broker both the commission paid by himself and that paid by the buyer.

Annotation: Principal's right to recover commissions paid by him or by third person to unfaithful agent or broker. 134 ALR 1346.

Assumpsit — *recovery of down payment.* In Seekins v. King, — RI —, 17 A (2d) 869, 134 ALR 1060, it was held that a vendee may not recover back a payment made on an executory land contract from a vendor who was able, ready, and willing to perform his contract not only at the time fixed by the terms of sale but for a long time thereafter, and who has sold the property to a third person for the same price, in the absence of evidence that the vendor was guilty of fraud in making the contract, or that the vendor rescinded the contract, or that the vendee's failure to fulfil the contract was due to any misfortune beyond his control that gave the vendor a benefit the retention of which would shock the conscience of the court.

Annotation: Vendee's right to recover back amount paid under executory contract for sale of land. 134 ALR 1064.

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ANNOTATED

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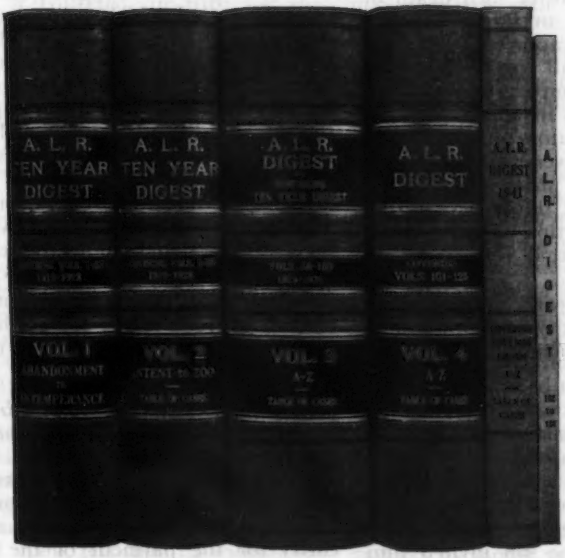

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W REPORTS make instantly available exhaustive and scholarly dis-
ons on the widest range of legal subjects, insuring to its many sub-
ers efficiency of operation.

Automobile Insurance — *death of named insured.* In Merchants Mutual Casualty Co. v. Egan, — NH —, 20 A (2d) 480, 135 ALR 545, 46, it was held that a provision in an automobile insurance policy that if the named insured shall die or be adjudged bankrupt or insolvent within the policy period, the policy shall, if written notice be given to the insured within thirty days after the date of such death or adjudication, cover the named insured's legal representative as the named insured, and, for thirty days after the date of such death or adjudication and until the appointment and qualification of such legal representative, shall cover any person having proper temporary custody of the automobile, is invalid as not conforming to a statutory provision that if the death, insolvency, or bankruptcy of the insured shall occur within the policy period, the policy, during the unexpired portion of such period, shall cover the legal representatives of the insured.

Annotation: Death of named insured as affecting coverage of automobile liability or indemnity policy. 135 ALR 749.

Automobiles — *car operated by guest of son of owner.* In Eagon v. Woolard, — W Va —, 11 SE (2d) 257, 134 ALR 970, it was held that the owner of an automobile, maintained for a family purpose, permitted its use by his son; the son invited into the automobile two persons as his guests; one of them operated the automobile, and while doing so the other was injured. The declaration, in an action by the injured person against the owner, his son, and the guest, driver, which alleges that the automobile was negligently operated "at the direction and under the management, supervision and control" of the son, states a case of legal liability for the injuries sustained as the result thereof, against the owner of the automobile, his son, and the guest operator.

Annotation: Liability of owner for negligence of one permitted by former's servant or member of his family to drive automobile. 134 ALR 974.

Automobiles — *measure of damages against parking station.* In Campbell v. Portsmouth Hotel Co. — NH —, 20 A (2d) 644, 135 ALR 1196, it was held that damages recoverable against a hotel company for negligence in failing to garage an automobile put in its charge by overnight guests, in consequence of which it was stolen, may properly be found to include the value of unrecovered equipment and baggage left in the car, although defendant had no actual knowledge of the presence of such articles, and may also include the traveling expenses of the plaintiffs in returning to their home after the theft, and so long as such expenses are less than its value, their expenses in retaking possession of the automobile after it was found.

Annotation: Measure and elements of damages recoverable against bailee of automobile in case of loss or theft. 135 ALR 1198.

Automobiles — *statutory liability of owner.* In Craddock v. Bickelhaupt, 227 Iowa 202, 288 NW 109, 135 ALR 474, it was held that the conditional vendor of an automobile is not, by reason of his retention of title as security for the payment of the purchase price, the owner thereof within a statute imposing upon the owner of a motor vehicle liability for the negligence of another operating it with his consent and defining the term "owner" as including "any person having the lawful ownership, use or control, or the right to the use or control, of a motor vehicle, under a lease or otherwise, for a period of ten or more successive days."

Annotation: Validity, construction, and effect of statutes which make

owner responsible or create a lien for injury or death inflicted by another operating an automobile. 135 ALR 481.

Bills and Notes — *negotiability.* In Citizens State Bank v. Pauly, 152 Kan 152, 102 P (2d) 966, 134 ALR 941, it was held that a clause in a promissory note payable to the payee's order, which "assigns" to the payee, for payment of the note, certain future contingent "collections," is in substance and effect a promise to hold such funds, if collected, in trust for the benefit of the holder of the note, and constitutes such an additional promise as to destroy the negotiability of the note, under the rule stated in Gen. Stat. 1935, § 52–205.

Annotation: Negotiability of paper as affected by provisions therein relating to future contingent fund or security for its payment. 134 ALR 946.

Building and Loan Associations — *retirement of stock.* In Texas Plains Building & Loan Asso. v. Colonial Corp. — Tex —, 151 SW (2d) 193, 134 ALR 1206, it was held that the action of a building and loan association in financial difficulties, which, without going into statutory liquidation, was attempting to wind up its affairs, in retiring stock by causing a trustee to purchase it at such prices as were agreed upon, less than its withdrawal value, out of cash received on sales of repossessed real estate owned by the association, is not unlawful where no fraud was practiced on owners of stock.

Annotation: Purchase or retirement of stock by building and loan association at a price less than its withdrawal value. 134 ALR 1212.

Civil Service — *Marriage as terminating status of women.* In Nephew v. Dearborn Library Commission, 298 Mich 187, 298 NW 376, 135 ALR 1340, it was held that a woman employee of a city library commission who marries, with knowledge of a rule of the commission making marriage of such an employee ground for termination of the employment, may properly be discharged by the commission, where the applicable civil service regulation authorizes the discharge of any employee of the city "for any cause . . . which, in the opinion of the person with authority to remove or dismiss such employee may interfere with the efficient discharge of his duty."

Annotation: Marriage as ground for discharge of one employed in public service other than as teacher. 135 ALR 1346.

Commerce — *state regulation.* In Maurer v. Hamilton, 309 US 598, 84 L ed 969, 60 S Ct 726, 135 ALR 1347, it was held that a state statute prohibiting the operation on the highways of the state of any vehicle carrying any other vehicle above the cab of the carrier vehicle or over the head of the operator of the carrier vehicle, does not, as applied to one engaged in interstate commerce as a common carrier of automobiles upon motor trucks, violate the commerce clause or the due process clause of the Federal Constitution.

Annotation: State regulation of carriers by motor vehicles as affected by interstate commerce clause or Federal legislation thereunder. 135 ALR 1358.

Corporations — *voting trustee stock.* In People v. Botts, 376 Ill 476, 34 NE (2d) 403, 134 ALR 983, it was held that trustees hold title jointly, and to vote corporate stock must act jointly, either in person or by proxy.

Annotation: Voting corporate stock title of which is held jointly. 134 ALR 989.

Cotenancy — *severance by statutory lien.* In Goff v. Yauman, — Wis —, 298 NW 179, 134 ALR 952, it was held that an application by a joint tenant for old age assistance, for which a statutory lien is imposed upon any and all real property of the beneficiary, including joint tenancy interests, enforceable after transfer of title by sale, succession, inheritance, or will, effects such a severance of the joint tenancy by the voluntary act of the joint tenant as to preclude the extinguishment of the lien by the passing of title to the surviving joint tenant at the death of the person receiving such assistance.

Annotation: Statutory lien on interest of joint tenant as severing joint tenancy. 134 ALR 957.

Declaratory Judgment — *effect of pending prosecutions.* In Updegraff v. Attorney General, 298 Mich 48, 298 NW 400, 135 ALR 931, it was held that jurisdiction will not be taken of an action for a declaratory judgment, brought by one being prosecuted in a criminal action, to adjudicate matters that may be presented in that action.

Annotation: Jurisdiction of declaratory action as affected by pendency of another action or proceeding. 135 ALR 934.

Discovery — *extent of physical examination.* In Riss & Co. v. Galloway, — Colo —, 114 P (2d) 550, 135 ALR 878, it was held that the power of a court to order a plaintiff in an action for personal injuries to submit to a physical examination does not extend so far as to require him to furnish samples of his bodily components to be used for the purpose of chemical analysis, as by requiring him to submit to a spinal puncture to determine whether he has syphilis.

Annotation: Nature, extent, and conduct of physical examination of party to action or proceeding to recover for personal injury or disability. 135 ALR 883.

Divorce — *commission of crime.* In Swanson v. Swanson, 128 Conn 128, 20 A (2d) 617, 135 ALR 849, it was held that an assault to commit rape is an "infamous crime" involving "a violation of conjugal duty" within the meaning of a statute making the commission of such a crime, when punishable by imprisonment in the state prison, ground for divorce.

Annotation: Character or nature of crime contemplated by statute as substantive ground for divorce. 135 ALR 851.

Evidence — *failure to call witnesses.* In Wright v. Safeway Stores, 7 Wash (2d) 341, 109 P (2d) 542, 135 ALR 1367–68, it was held that no presumption or inference arises, in an action for personal injuries sustained in slipping on a store floor which had been oiled, allegedly because of pools of oil in the grooves of the flooring, from the failure of the defendant store owner, whose employees testified in its behalf as to the oiling of the floor and its condition thereafter, to call as witnesses other employees who were working in the store when the oiling was done, that the testimony of such employees would have been unfavorable, where it does not appear that the defendant did not produce the best testimony available.

Annotation: Presumption or inference from party's failure to produce witnesses within his control, as affected by his introduction of some evidence on the matter in question. 135 ALR 1375.

Evidence — *physician's records.* In Freedman v. Mutual Life Insurance Co. — Pa —, 21 A (2d) 81, 135 ALR 1249–50, it was held that records made by a practicing physician in the course of his professional employment

contemporaneously with the visits and examination of a patient under circumstances which suggest no motive for falsification, of such visits, of statements made by the patient as to symptoms, and of his treatment, are admissible in evidence in an action on a life insurance policy to show the facts recorded.

Annotation: Admissibility of records of a practicing physician or surgeon as evidence of physical or mental condition of person examined. 135 ALR 1258.

Evidence — *stopping distances of automobile.* In Caperon v. Tuttle, — Utah —, 116 P (2d) 402, 135 ALR 1399, it was held that opinion evidence as to stopping distances of automobiles is admissible when based on facts such as the type of car, the surface and grade of the road, and similar circumstances which correspond to the evidence before the court; otherwise, when based on circumstances which deviate entirely from the evidence before the court and which would be most favorable to the party offering the evidence.

Annotation: Opinion evidence as to distance within which automobile can be stopped. 135 ALR 1404.

Expert Testimony — *cause of death.* In Burton v. Holden & Martin Lumber Co. 112 Vt 17, 20 A (2d) 99, 135 ALR 512, it was held that medical testimony that a serious but localized infection resulting from a sliver in the thumb could possibly have been a contributing cause of death from cerebral thrombosis a little over two months later is insufficient, even where accompanied by evidence that before the thumb injury the decedent was in a normal condition for a man of his age and with no material hardening of the arteries, to warrant a workman's compensation commissioner in finding that the sliver was the cause of death, since such evidence does not bar all other causes.

Annotation: Sufficiency of expert evidence to establish causal relation between accident and physical condition or death. 135 ALR 516.

Expert Testimony — *insurance matters.* In New York Life Insurance Co. v. Kuhlenschmidt, — Ind —, 33 NE (2d) 340, 135 ALR 397, it was held that in an action on a life insurance policy, defended on the ground that the application contained misstatements as to the medical history of the applicant, thereby raising the issue whether if the facts had been disclosed the insurer might reasonably have rejected the application, the insurer's employee or official charged with the duty of passing thereon ought to be permitted to testify what he would have done if the facts had been truly stated, and persons qualified by their special knowledge may also testify as to the reasonableness of his possible action in the premises, though as the subject of inquiry becomes more technically involved or scientific, the trial court, within whose reasonable discretion is the determination of the qualifications of a witness, should exercise greater care in ascertaining that an offered witness is in a position to throw light on the question.

Annotation: Opinion or expert testimony as to materiality of misrepresentation in application for insurance or as to increase of risk or as to practice or usage of insurance companies regarding acceptance or rejection of certain class of risk. 135 ALR 411.

Extortion — *threat of prosecution in collection of debt.* In O'Neil v. State, — Wis —, 296 NW 96, 135 ALR 719, it was held that although a person injured by another's criminal act has the right, in demanding in good faith payment for the damages thereby caused, to state to him that a crim-

inal prosecution will be instituted against him for his misconduct if the damages are not paid, it is not lawful for the injured person maliciously to threaten to accuse the wrongdoer of the crime with the intent thereby to extort money from him.

Annotation: Extortion predicated upon statements or intimations regarding criminal liability, in connection with attempt to collect or settle a claim which defendant believed to be valid. 135 ALR 728.

False Pretenses — *effect of conditional sales contract.* In Whitmore v. State, — Wis —, 298 NW 194, 134 ALR 872, it was held that one purchasing an article under a conditional sales contract, giving a worthless check for the down payment, is none the less guilty of the offense of obtaining property by false pretenses because the seller relied upon the retention of title by the conditional sales contract as well as upon the check.

Annotation: Offense of obtaining property by false pretenses predicated upon transaction involving conditional sale. 134 ALR 874.

Gaming. — *pinball machine as game of chance.* In State v. Kilburn, 111 Mont 400, 109 P (2d) 1113, 135 ALR 99–100, it was held that a pinball machine consisting of a pin-studded inclined plane down which a ball, propelled to the top of the plane by a spring actuated by the player, rolls, which returns to the player trade checks, redeemable in merchandise or usable in playing the machine if the ball drops into certain holes indicated in advance of the play, for the privilege of operating which the player inserts in a slot a coin or trade check, is within the operation of a statute making it an offense to conduct "any game of chance played with . . . any device whatsoever," or to conduct any slot machine or other similar machine or device for "money, checks, credits, or any representative of value," where, although his control over the force with which a ball is propelled to the top of the plane enables the player to develop a certain amount of skill, the result is, as to the patronizing public generally, purely a matter of chance.

Annotation: What are games of chance, games of skill, and mixed games of chance and skill. 135 ALR 104.

Gifts — *joint bank account.* In Rhorbacker v. Citizens Building Asso. Co. 138 Ohio St 273, 34 NE (2d) 751, 135 ALR 288–89, it was held that when the relationship of creditor and debtor exists between a depositor and a financial institution, and the depositor directs the institution to withdraw a specified sum of money from her account, convert it into a certificate of deposit payable to herself or another or the survivor, and place such certificate in her passbook at the institution, all of which is done in consummation of the expressed desire and intent of the depositor, an executed contract thereby arises between the depositor and the institution creating an immediate joint and equal interest in the certificate in the depositor and the designated person, with the attendant incident of survivorship, binding the institution to its terms. Upon the death of the depositor, the arrangement having remained undisturbed, such designated person, as the survivor, becomes the owner of the certificate and entitled to its possession and benefits, by virtue of the completed contract. Consideration passing between the depositor and the one surviving is not necessary, and full assent to the contract by such survivor may be presumed, the contract being one of advantage without burden.

Annotation: Gift or trust by deposit of funds belonging to depositor

in bank account in name of himself and another. 135 ALR 993.

Income Taxes — *bad debt losses.* In Dunbar v. Commissioner of Internal Revenue, 119 F (2d) 367, 135 ALR 1424, it was held that the Federal income tax statute, in providing for deduction of losses from gross income, contemplates only losses which are fixed by identifiable events, and is concerned only with realized losses.

Annotation: Year in which loss or bad debt must be charged in order to be allowed as a deduction from taxpayer's income. 135 ALR 1430.

Income Taxes — *contingent remainder.* In Helvering v. Reynolds, 313 US 428, 85 L ed 1438, 61 S Ct 971, 134 ALR 1155, it was held that a contingent remainder interest in a testamentary trust is, for the purpose of determining, for Federal income tax purposes, gain or loss under a statute making the basis of such determination in the case of property acquired by bequest, devise, or inheritance, its fair market value at the time of such acquisition, within the scope of a Treasury regulation that "all titles to property acquired by bequest, devise, or inheritance relate back to the death of the decedent, even though the interest of him who takes the title was, at the date of the death of the decedent, legal, equitable, vested, contingent, general, specific, residual, conditional, executory, or otherwise."

Annotation: Time as of which value of property taken by remainderman is to be determined in ascertaining profit or loss from its sale for income tax purposes. 134 ALR 1163.

Insurance Companies — *basis of license tax.* In Equitable Life Assurance Society v. Hobbs, 154 Kan 1, 114 P (2d) 871, 135 ALR 1234–35, it was held that the provisions of Gen. Stat. 1935, § 40–252, and other statutory provisions of the 1927 Insurance Code, examined, and held, the lawmakers intended to include "considerations for annuity contracts" under the term "premium," and considerations received by insurance companies for "annuity contracts" are therefore taxable in the same manner as premiums received for insurance.

Annotation: Consideration paid for annuity obligation as "premium" within contemplation of tax statutes. 135 ALR 1248.

Insurance — *facility of payment clause.* In Minuto v. Metropolitan Life Insurance Co. 58 RI 71, 191 A 117, 135 ALR 953, it was held that the option given to the insurer under a facility of payment clause in an industrial life insurance policy which provides that the insurer may make payment to (inter alia) "any other person appearing to said company to be equitably entitled to the same by reason of having incurred expense on behalf of the insured or for his or her burial," is limited, and may be exercised only in favor of a person who in the judgment of the insurer, based on reasonable grounds, has incurred such expense.

Annotation: Scope of insurer's right to designate beneficiary under facility of payment clause. 135 ALR 956.

Joint Debtors — *dismissal without prejudice as to others.* In Eberle v. Sinclair Prairie Oil Co. 120 F (2d) 746, 135 ALR 1494, it was held that a court in which an action is brought against a joint tort-feasor is without power, after its approval of a compromise therein upon which judgment dismissing the action with prejudice is entered, to provide in the judgment that the compromise shall be without prejudice to the claim of the plaintiff against the other tort-feasors.

Annotation: Provision in judgment in action against one or more

joint tort-feasors to effect that it shall be without prejudice to plaintiff's claim against another joint tort-feasor, or otherwise reserving rights against him, as affecting question of release of latter. 135 ALR 1498.

Limitations of Actions — *new promise.* In Strong v. Sunset Copper Co. — Wash (2d) —, 114 P (2d) 526, 135 ALR 423, it was held that a statutory requirement that an acknowledgment or promise must be in writing in order to be "sufficient evidence" of a new or continuing contract taking a cause of action out of the operation of the statute of limitations refers only to acts or statements of a unilateral nature, and is inapplicable where there is a new and valid contract between the parties such as an extension agreement, supported by a contemporaneous consideration.

Annotation: Statutory requirement that new promise or acknowledgment must be in writing in order to toll statute of limitation, as applicable where new promise or acknowledgment is supported by a contemporaneous consideration. 135 ALR 433.

Malicious Prosecution — *evidentiary dismissal.* In Jaffe v. Stone, 18 Cal (2d) Adv 121, 114 P (2d) 335, 135 ALR 775, it was held that a dismissal of a prosecution by a magistrate at a preliminary hearing for lack of evidence constitutes a favorable termination of the prosecution sufficient to sustain a subsequent action by the accused for malicious prosecution.

Annotation: Dismissal by magistrate or other inferior court for lack or insufficiency of evidence as a final termination of prosecution as regards action for malicious prosecution. 135 ALR 784.

Marriage License — *delivery to person holding power of attorney.* In Sherman v. Millikin, — Wash (2d) —, 114 P (2d) 989, 135 ALR 796, it was held that the courts will not compel the delivery of a marriage license to one holding a power of attorney from an applicant therefor to receive it at the expiration of the statutory period following application.

Annotation: Power of attorney to apply for or receive marriage license for another. 135 ALR 800.

Master and Servant — *duration of permanent employment.* In Edwards v. Kentucky Utilities Co. 286 Ky 341, 150 SW (2d) 916, 135 ALR 642, it was held that a contract for permanent employment which is not supported by any consideration other than the obligation of services to be performed on the one hand and wages to be paid on the other is a contract for an indefinite period, and as such is terminable at the will of either party.

Annotation: Validity and duration of contract purporting to be for permanent employment. 135 ALR 646.

Military Service — *by public officer.* In Hoyt v. Broome County, 285 NY 402, 34 NE (2d) 481, 134 ALR 916–917, it was held that a state statute providing that every officer or employee of the state, or of any political subdivision thereof, who is a member of the National Guard or Naval Militia, or a member of the Reserve Corps or force in the Federal military, naval, or marine service, and who shall be ordered into active duty, shall continue to receive his salary from the state or political subdivision in full for thirty days, and thereafter to receive such part as equals the excess of any of the compensation paid him for the performance of such duty, has, though it requires no guaranty that the employee will return to the public service at the end of his ordered military or naval duty, a reasonable relation to the continuance in the public service of those found competent to discharge the duties thereof

contemplated by the civil service provisions of the state Constitution, and so does not offend constitutional provisions that no county, city, town, village, or school district shall give or loan any money or property to, or in aid of, any individual, and that no county, city, town, village, or school district shall contract any indebtedness, except for county, city, town, village, or school district purposes, respectively.

Annotation: Constitutionality, construction, and application of statutes concerning status and rights, as regards governmental bodies, of public officers or employees in civil service, while performing military or naval duty. 134 ALR 919.

Public Contracts — *agreements as to extras.* In Michigan City v. Witter, — Ind —, 34 NE (2d) 132, 135 ALR 1259, it was held that a statutory requirement that public contracts for construction work costing over a stated amount shall be let by competitive bidding does not preclude a city from agreeing with a contractor to pay for extras occasioned by changes required by conditions developing in the progress of the work which were not known at the time the plans and specifications were adopted and could not have been ascertained at the time with any reasonable degree of diligence.

Annotation: Statute requiring competitive bidding for public contract as affecting validity of agreement, subsequent to the award of the contract, to allow the contractor additional compensation for extras or additional labor and material not included in the written contract. 135 ALR 1265.

Public Officers — *restoration of eligibility after conviction.* In Arnett v. Stumbo, — Ky —, 153 SW (2d) 889, 135 ALR 1488, it was held that a constitutional provision that disability to hold office because of conviction of a felony may be removed by pardon of the governor (equivalent of executive clemency exercised by him) is applicable in case of a conviction in a Federal court for violation of a Federal statute amounting to felony; and the governor's certificate of restoration of citizenship is effective in that regard, notwithstanding that the person in question has not been pardoned or restored to rights of citizenship by the President of the United States.

Annotation: Executive clemency to remove disqualification for office or other disqualification, resulting from conviction of crime, as applicable in case of conviction in Federal court or court of another state. 135 ALR 1493.

Specific Performance — *contract for services.* In Fiedler v. Coast Finance Co. 129 NJ Eq 161, 18 A (2d) 268, 135 ALR 273, it was held that unless the party to perform the personal services has himself fully performed, a contract calling for personal services will not be specifically enforced, even though such party states willingness to perform, since, as he cannot be compelled to do so, the remedy is not mutual.

Annotation: Specific performance of contract for services. 135 ALR 279.

Trusts — *oral agreement to purchase land for another.* In Carkonen v. Alberts, 196 Wash 575, 83 P (2d) 899, 135 ALR 209, it was held that a real-estate agent who, being employed to negotiate for the purchase of land, buys the land for himself with his own funds and afterwards sells it at a profit is not chargeable with a resulting trust in the proceeds in favor of his principal.

Annotation: Rights of parties under oral agreement to buy land or bid it in at judicial sale. 135 ALR 232.

THE HUMOROUS SIDE

Drunken Witness. "I can see him now, his mouth stretching over the wide desolation of his meaningless face,—a fountain of falsehood and a sepulcher of rum."

—Conkling.

Time Flies. During the "Be Kind to the Waitress" week, some one brought out the following:

"Are you the girl who took my order?" asked the impatient man in a cafe. "Yes sir," the waitress replied, sweetly. "Well, I declare," he beamed, "You don't look a day older."

—L. and R. News.

Insurance. Title examiners find many odd provisions in wills. One recently examined in our office caused more than usual speculation as to whether or not the testator was sure of his status in the great beyond. He directs that his estate be distributed ¼ to a Jewish organization to be selected by his Executor, ¼ to a Masonic organization to be similarly selected, ¼ to a Catholic organization to be selected by the Executor and ¼ to some Protestant organization to be selected by the Executor. Reminds us of the fellow who when asked if he was going to Heaven or Hell replied that it made little difference as he had friends in both places. This particular testator evidently had friends in four quarters.

—L. and R. News.

Put Out the Fire. Romeo: Sweetheart of mine, I'm burning up with love for you.

Juliet: Don't make a fuel of yourself!

—It's Said and Done.

Will Regulations Lead to This. The little moth that keeps bobbing out of the tear in our office leather chair, and biting us, asked the other day: "Had any more eating trouble, fusspot?" We couldn't think of a thing except the Hard Way to get a small vanilla ice cream cone in an ice cream store, or, as we'll sub-title it, Bucking Regulations. It seems they have two types of cones, one type for the nickel-size (one dip) made out of ground-up shirt stiffeners and old light bulb boxes. The other kind, for the two-dip ten-cent boys, is made out of nice tasting cake-stuff, rolled in the old-fashioned way, a way, incidentally, which is still good enough for us.

So we made an elaborate proposition to the ice cream store people the other day. "A large two-dip cone hangs over the edges and drips all over us," we said lovingly, "and besides we can't eat that much ice cream. Would you consider putting ONE dip of vanilla in a nice good ten-cent type cone, if we paid you ten cents?"

The man looked at us as everybody does, wondering when the wagon was coming.

"Why—I'll have to ask the manager," he said.

"Why?" we asked, cooing like a hungry elephant.

"Because one dip of ice cream will slide down too far in the ten-cent size cones."

"Slide down too far for WHOM?" we purred, like a blast of rusty tin.

"Well—for our regulations," the man said.

"If it suits *us*, won't it suit you?" we whispered, like a hoarse train caller.

"We never do it," the man said firmly.

"Do you ever go jump in the lake?" we asked, sweetly like a gorilla with hydrophobia.

"Seldom," the man said, laughing fit to kill, wondering *when* the wagon would come.

Se we paid our ten cents for a *double-dip* vanilla, which double-dripped over the edges—all over our new pants which will cost 50 cents to clean. Now please go back in your chair, little moth-pal, will you?

—It's Said and Done.

So those you leave behind may enjoy the fruits of your labor, of course. But merely having them inherit doesn't assure that. They'll need competent guidance in managing the estate that you created.

Arrange for that while you're still active. Acquaint your lawyer with your affairs, your intentions. Name him as co-executor, if you like.

No lawyer expects you to engage him unless his services yield you benefits. Office counsel is *not* expensive; its aid is often invaluable. Protect your heirs with an estate, yes; equally important, protect the estate, too. You can—today.

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No. 1

of a series of advertisements for the benefit of the public and legal profession appearing in *Time* magazine. This one appeared in the issue of January 12, 1942.

Safety First. The following remarkable example of understatement is contained in an affidavit from Chicago:

STATE OF ILLINOIS } ss.
COUNTY OF COOK }

John Blank, being first duly sworn, on oath deposes and says that he has read the above and foregoing cross-complaint by him subscribed and that the contents therein are true in substance and in fact to the best of his information and belief, except as to those matters alleged on information and belief, and as to those matters he barely believes them to be true.

—*Chicago Bar Record.*

Could Be. The plaintiff was extremely alert, certain that the defendant's attorney was attempting to trip him on cross-examination.

Said the defendant's attorney: "Now tell me, how much traffic was passing the place where the accident occurred about the time of and just before the collision?"

The plaintiff: "Wait a minute, which do you mean, at the time of the accident or just before?"

The defendant's attorney: "Well, let's take first, just before the accident."

The plaintiff: "I don't know. I wasn't there, then."

—*Dicta.*

When the Small Shall Be Great. In Connecticut Mutual Life Ins. Co. v. Stinson, 62 Ill App 320, it was held that while the one-vigintillionth part off the front end of a lot is so minute as to be unappreciable by the physical senses, nevertheless the mind recognizes it as a real entity, and a title obtained to it by a deed under a tax sale would cut the owner off from access to the street, and render him guilty of a technical trespass whenever he passed over it.

Time for Thought. The following follows a delay of two years after an adverse decision in a lower court, a confirmation twice in one appellate court, and a denial for review in another court, on demand for payment of the attorney for party who lost answered thus:

"In view of the momentous decision required by yours of July 19 it will be in order that the matter be given needful consideration. The intention in the premises is that a reasonable period, of a month, be allowed for a proper treatment of the matter. We will proceed with that temporal element in mind.

—Contributed.

Opposition. A will contest was being tried in Colorado. The testator had been a prominent pioneer mining man and almost the whole town turned out for the trial. It was midsummer and all the windows on three sides of the little court room were open. Both attorneys were relatively unacquainted in the community and both were making the greatest effort to create a favorable impression with the spectators as well as with the jury. Mr. B was making his opening statement. Suddenly a stray burro, which was grazing just outside the court house, set up a loud braying. At first B attempted to sandwich his remarks in between outbursts from the outside, then raised his voice as the heehaws settled into a steady rhythm. There were titters from the spectators, then laughter and finally everyone in the court room—judge, jury, counsel and spectators were convulsed in laughter.

In a slight pause, created principally by the burro, Mr. A turned to Mr. B and in a hoarse whisper, obviously intended to be heard over the entire room, said, "It seems you have serious opposition."

"Yes," replied Mr. B quickly, "one outside and one inside."

—*Dicta.*

Forever. The eloquence which was such a necessary part of the lawyer's stock-in-trade of fifty years ago is shown in the following which was a part of a young lawyer's peroration: "May it please your Honor, this is a stupendous question. Its decision by you this day will live in judicial history long after you and I shall have passed from this scene of earthly glory and sublunary vanity. When the tower of Pisa shall be forgotten; when Waterloo and Bunker Hill shall grow dim in the distant cycles of receding centuries; when the names of Napoleon, Marlborough, and Washington are no longer remembered; when the pyramids of the Pharaohs shall have crumbled into dust; when the hippopotamus shall cease to inhabit its native Nile, even then your ruling on this demurrer will still survive in the antique volumes of legal lore, fresh, green, and imperishable. The case, your Honor, originally concerns the cost of two new hats and an umbrella."

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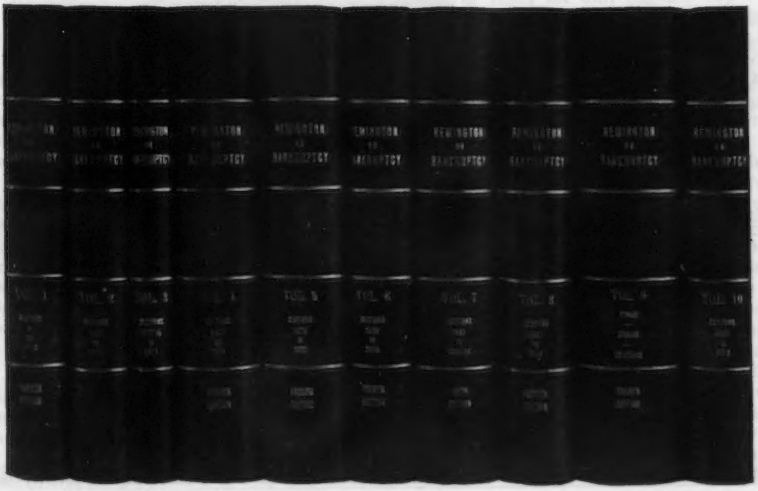

Criminal Negligence. Justice (to prisoner): "I see you have a jug there; is that the whiskey that made you drunk?"

Prisoner: "Yes, your Honor."

Justice: "Pass it up here; I'll sample it."

Bailiff: "Pass the jug to his Honor."

Justice (after a long pull): "The prisoner gets twelve months on the chain gang. Any man that would get drunk on good whiskey like that, and run the risk of losing the jug, is irresponsible, and should be taken care of. Clear the Court."

Not Qualified. A candidate for citizenship appeared with his witnesses, both being in the uniform of the United States Marine Corps. The Judge asked the witness if the applicant was of good moral character.

"He is," replied the witness.

"How do you know?" asked the Judge.

"We've served together five years," was the answer.

"Is he attached to republican institutions?" asked the Judge.

"I can't say as to that, your Honor, for I'm a Democrat."

The court roared, and, recovering, said: "Let the applicant be admitted."

New Procedure. One of the most amusing incidents occurred in the court of a newly-elected justice of the peace. A prisoner had been arrested for some petty offence, and was brought into his court to answer for the same. He was attended by his counsel, and the people also had their representative there in the form of a recently admitted member of the bar. Upon being arraigned, the court asked the defendant if he were guilty of the offence charged, to which he replied: "Not guilty." The court then said a motion for his discharge was in order, and then the prisoner's counsel, seeing the drift of the matter, promptly replied, "I move the court that the defendant be discharged." The court then inquired if the motion was seconded, and the prisoner quickly said, "I second the motion." The court then said: "The motion has been duly made and seconded that this prisoner be discharged, are there any remarks to be made?" and the people's representative was so dumbfounded by the "new procedure," that he was helpless to stem the tide. The court then put the motion, and said all who were in favor of the prisoner's discharge say "aye" and two "ayes" came vociferously from the prisoner and his counsel. "All opposed say "no," and there being no "noes," the motion was carried unanimously and the prisoner was discharged.

Proposed Rules of Court. The following resolutions were submitted to the English Council of Judges by one of the junior judges with a view to facilitating the progress of judicial business:

That judges shall commence business at the time appointed for the sitting of the court, or at least not more than fifteen minutes after such time.

That a judge of the Court of Appeals shall not interrupt counsel more than six times in the space of five minutes; other judges not more than three times in the same space of time.

That judges, when they adjourn in the middle of the day for a quarter of an hour, shall return into court at the end of the quarter of an hour, or at least not more than half an hour after that time.

That judges shall not sleep when on the bench for more than half an hour in the course of the day; and when two judges are sitting together, they shall not both sleep at the same time.

Competition—The Soul of Trade. In the heyday of the railroads, two railroad presidents, A and B, were unrelenting rivals.

The prevailing rate for a carload of cattle was $100. A cut his price to $75. Not to be outdone, B cut it further to $50. A reduced it to $25. B retaliated and made it $10. Then A slashed it to $1 and challenged B to make it any lower. B refused to accept the challenge, and all of the business went to A. The B rolling stock stood idle in the yards. A could hardly supply enough cars to fill the demand.

All this was very gratifying to A. At last he had given that upstart a good thrashing. But A was doomed to chagrin. A few weeks later he discovered that B had bought up all the cattle coming into Buffalo and had shipped them to New York on his rival's line, cleaning up a small fortune. The next day the price was up to $100 again.

Now and Then. Fifty years ago a railroad company brought suit to appropriate land for right of way, and the case was heard before Judge B. and a jury. The judge, a bluff, honest old Democrat, frequently im

bibed rather too freely of his favorite Bourbon, and when fairly under its influence his judicial opinions were apt to get mixed with his politics, and on such occasions he was inclined to be more forcible and profane than usual in urging what he regarded as sound principles of his party. While the jury in the case referred to was out viewing the premises, the old judge filled up on his favorite beverage, and when it returned he was fully prepared to deliver his charge, which he did in the words and figures following:

"Gentlemen of the jury, it is a fundamental principle of the Democratic party to oppose corporations. This railroad is one of 'em. Give 'em hell!"

The Apology. Magistrate: You say you stole the ham because you were hungry. A man can't eat a whole ham, can he?

Prisoner: Very much to my regret, your Honor, I had not a knife with me; otherwise I should only have taken a slice.

Death and Taxes. "Now, ladies and gentlemen," screeched the political orator, "I want to tax your memory!"

"Great grief!" groaned a man in the audience. "Has it come to that!"

Decidedly Not Civil. Puzzled male voice on telephone: "The telephone book lists three branches of your society. Which one should I go to?"

L.A.S. Clerk: "Is it a civil matter, sir?"

Male voice, emphatically: "Oh, no ma'm, it's trouble with my wife."

—*Legal Aid Review*
11 Park Place
New York City

Too Straight, Maybe. The witness was on the stand to testify as to the good character of the accused, who was on trial for shooting a police officer. The usual preliminary questions were asked and answered in the affirmative. Then came the chief question, propounded with great gusto:

"Now, what is this man's general reputation?"

The witness responded with equal gusto:

"He was known everywhere as a straight shooter!" —*Dicta.*

Turning the Tables. A leading counsel was celebrated at the bar for the following mode of examining a witness:

"Now, pray listen to the question I am going to ask you. Be attentive, remember, you will answer as you please; and remember, I don't care a rush what you answer," etc.

His opponent, somewhat weary of these oft reiterated remarks, resolved to mortify the utterer of them; and one day, meeting him in the street, thus accosted him: "Ha! is it you? Now pray listen to the question I am going to ask you. Be attentive; remember, you will answer what you please; and, remember, I don't care a rush what you answer."

The Judges Know. Whiskey Is Intoxicating.—It has been decided again that Whiskey is intoxicating, and that this fact, being one entitled to judicial notice, need not be alleged in an indictment for the unlawful sale of such beverage.

A Lesson in Democracy. A former prominent judge had taken a train. He discovered after he had started that the train did not stop at his station. Accordingly as the cars were approaching his destination he pulled the bell cord and the train came to a stand. The conductor rushed into the car.

"Who pulled that rope?"

"I did," replied the judge.

"What for?"

"Because I wanted to get off."

The conductor thereupon made some remarks to the judge more forcible and less respectful than the judge was accustomed to hear. The next day the judge complained to the president of the road, who told him he would inquire into the matter.

When next they met the judge asked the president if he had reprimanded the conductor for his insolence.

"'I spoke to him," he replied.

"Well, what did he say?"

"He said he would come some day and adjourn your court!"

The judge appreciated the man's way of saying that he had the right to control his own train and did not pursue the matter further.

Worth Trying Any Way. Research in criminal law has disclosed some novel defences. To a complaint for assault and battery, the defendant set up that he was laboring at the time under an acute attack of dyspepsia. A tramp, in prison, who refused to work, was released on the ground of "persecutional mania," i. e., the hallucination

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that he was imprisoned and condemned to work solely for the sake of persecution. To an indictment of manslaughter by abortion, the prisoner set up the defence of kleptomania; but it didn't succeed.

A Rude Awakening. A certain Justice of the Peace is wont to doze during the more or less uninteresting speeches of counsel, and from time to time to awaken to ejaculate an odd remark in the course of a speech. An eloquent lawyer was addressing his Honor on the subject of certain town commissioners' right to a particular water-way. In his address he repeated somewhat emphatically, "We must have water, we must have water." The learned judge thereupon awoke, and startled the bar with the remark, "Well, just a little drop, thank you, just a little. I like it strong."

Private Lives. The chaplain of a convict prison asked one of the prisoners who was in for manslaughter, what man he had killed. "It was a woman, my wife, and not a man," he replied; "but," he continued, "it was altogether a private matter, with which the public has no concern."

Let the Record Speak. Judge (to convicted thief): "Are you aware that you have been frequently convicted of similar offences before this?"

Prisoner: "The court must know that more accurately than I; I don't keep any records."

On Second Thought. A justice of the peace is the owner of a fine garden, the pride of his heart. The other day he was informed that an unruly cow had wrought desolation in his Eden, and he at once ordered the animal sent to the pound. Then he went up to view the wreck and after noting the vacant places where the beets and corn had been, the trampled-down squashes and cabbages and the demoralized pea vines and sunflowers, and ascertaining, as he supposed, the owner of the cow, he made out a writ against that individual, containing fourteen different and distinct counts, including trespass, forcible entry, malicious mischief, nuisance, riotous and disorderly conduct, and assault and battery with intent to kill. It was then that he learned that the trespasser was his own cow, and his ire cooled as he meekly paid a field-driver for getting her out of the pound. —*Exchange.*

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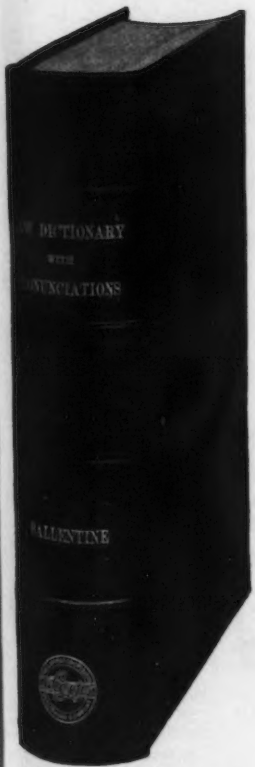

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One Way Out. A justice of the peace was called upon to perform the marriage ceremony for an elderly couple, and to use his own words:

"While I looked over my statutes to find out what the law said I must do, the man said: 'Squire, I may as well tell you that this woman has another man living, but she haint seen him in four years.' I told him then that I couldn't marry them as the law would hold me responsible for bigamy.

"Then he said to me: 'Squire, what can I do to make the thing all right, so I can marry her?'

"I didn't exactly know, but I looked through my book of Forms, and finally came to the conclusion that the only thing he could do would be hunt up her other man, and get him to give him a quit-claim deed. Was I right?"

Some Greed. Here are two paragraphs taken from a petition recently filed in the District Court of Fayette County, Iowa, "That said defendant, William L_____ is a half brother of plaintiff and the only concern he has exhibited for and concerning plaintiff is his exhibition of unconscionable greed without parallel in our Republic, if in the United States of America, who has, as plaintiff is informed, made an offer of the appraised value of said premises of $1175.00.

And the only interest said defendant has shown for and in relation to plaintiff is his exhibition of his insatiate, unmitigated, unconscionable and unparalleled vicious greed and desire to deprive plaintiff and her said children of all their legal rights and turn them into the streets, with no place to go, notwithstanding the facts hereinbefore stated.

Contributor: W. H. Antes,
West Union, Iowa.

"Poor Healey, got rid of his wife and now that he's seen the amount of her alimony, he wants her back!"

Well Named. State of Indiana vs. Ben Booze arrested and convicted in the Municipal Court of Marion County Indiana for public intoxication. He was drunk.

Contributor: Samuel B. Huffman,
424 Merchants Bank Bldg.
Indianapolis, Ind.

Religious Fervor. While in grade school there was a little colored boy in the class who insisted his name was Charles Augustus Asbestous Ramnastes de Madison Holterfield Swane Cressfield; and he always insisted in writing his name in full on the blackboard. He developed into the best penman in the class and the teacher said it was because of his long name which he insisted upon writing in full.

When this boy became 20 or 21 years of age he developed into a very zealous colored preacher and we used to sit across the street from his church and listen to him preach. One evening as he was expounding the beauties of religion very earnestly he said: "If ah wus ah junebug! If ah wus a junebug! I'de fly to Heaven right ah way." And a colored lady with a high pitch voice chirped in: "Oh No! brudder Cressfield, ah jaybird 'ud gitchy for yu got half way!"

Another time while he was very earnestly in prayer he said; "Oh Lord! Come down thru de ruff and ah pay fo de shingles!"

Contributor: G. D. Negley,
Graysville, Ill.

Can You Help Her Out? An inquiring client, after stating that her husband had threatened to divorce her, added: "And he says he's going to get a *second degree* divorce too . . . what kind is that?"

Contributor: Leonard Dunn
State's Attorney, Franklin County
Benton, Ill.